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KNM PROCESS SYSTEMS SDN BHD

v.

MISSION BIOFUELS SDN BHD

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HIGH COURT MALAYA, KUALA LUMPUR
MOHAMAD ARIFF YUSOF J
[CIVIL SUIT NO: D-22NCC-321-03-2012]
3 SEPTEMBER 2012

C ***ARBITRATION:*** *Agreement - Arbitration clause - Construction, principles - Stay of proceedings - Claim for monies owed under contract - Whether caught by arbitration clause in contract - Whether dispute to be referred to arbitration - Fiona Trust & Holding Corporation and Others v. Privalov and Others - Consideration of*

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On 25 July 2007, the plaintiff executed an agreement with the defendant ('EPCC Contract') by which it undertook to construct, complete and commission a certain biodiesel project for the defendant at Kuantan Port, Kuantan, Pahang. *Inter alia*, cl. 50 of the EPCC Contract provides that "disputes between parties in connection with, or arising out of this contract shall be settled in the first instance by mutual discussion of both parties, failing which, the dispute shall be settled by an arbitral tribunal". Subsequently, the plaintiff delivered a quantity of de-acidified palm oil and catalyst resin to the defendant's sub-contractor in France, presumably for the purpose of the biodiesel plant under the EPCC Contract. The plaintiff alleged that the defendant had not paid for the items supplied and delivered, and in the circumstances filed an action to recover the payment amounting to RM804,123.10. It was the plaintiff's stand, in not adverting to arbitration as envisaged by cl. 50 of the EPCC Contract, that the claim was not related to and fell outside the scope of the said agreement. The defendant, however, retorted otherwise, and consequently applied for stay of proceedings pursuant to the said cl. 50 and s. 10 of the Arbitration Act 2005 ('the Act'). These provisions apart, before the learned judge herein, the defendant argued that granting stay would accord with the principles as enunciated by the House of Lords in *Fiona Trust & Holding Corporation and Others v. Privalov And Others ('Fiona Trust')*, an authority based on s. 9 of the English Arbitration Act 1996, namely, that an arbitration agreement should be broadly construed, and that there is no rational basis upon which businessmen would wish to have questions of validity or enforceability of the contract decided by

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one tribunal and of its performance by another. The plaintiff reiterated its stand, and in any case argued that *Fiona Trust* should be distinguished since s. 9 of the English Arbitration Act 1996 was differently worded from s. 10 of the Act, and further that the court should rightfully be guided *inter alia* by the authority of the Court of Appeal in *Duta Wajar Sdn Bhd v. Pasukhas Construction Sdn Bhd & Anor ('Duta Wajar')*.

Held (allowing stay):

(1) The approach in *Fiona Trust* should be followed. Quite apart from the broad reading to be given to linking words such as "in relation to", or "in connection with", or "arising under", the principle that it is to be presumed that rational businessmen would intend to have the same forum decide disputes between themselves in respect of the same broad subject matter unless they have expressed otherwise by clear language, is commendable in terms of legal principle, logic, commercial sense and policy. Persuasive as the decision may be, *Fiona Trust* should be the starting point for any consideration of the principles of stay of proceedings, in relation to widely-drafted arbitration clauses. (para 26)

(2) This court could not agree with the point taken by the plaintiff that *Fiona Trust* should be distinguished because s. 9 of the English Arbitration Act is differently worded from s. 10 of our Arbitration Act 2005. There are many similarities than differences between the two sections, and the differences are really differences in mere statutory wording. (para 26)

(3) *Duta Wajar* is hardly relevant on the facts of the present application. The Court of Appeal in *Duta Wajar* found there was no written arbitration between the parties and therefore the question of stay under s. 10 did not arise. In the present case, there was an arbitration clause which was couched in wide terms and even the invoices referred to the EPCC Contract. Likewise, the relevant e-mail messages did not support the plaintiff's stand that the delivery and supply to the sub-contractor were wholly separate transactions. There was thus sufficient connection between the contract of delivery and supply and the main EPCC contract to attract s. 10 of the Act. (para 28)

Case(s) referred to:

Coop International Pte Ltd v. Ebel SA [1998] 3 SLR 670 ***(dist)***

Duta Wajar Sdn Bhd v. Pasukhas Construction Sdn Bhd & Anor [2012] 4 CLJ 844 CA ***(dist)***

Fiona Trust & Holding Corporation and Others v. Privalov and Others [2007] 4 All ER 951 ***(foll)***

Sa Shee & Co (Pte) Ltd v. Kaki Bukit Industrial Park Pte Ltd [2000] 2 SLR 12 ***(refd)***

Sembawang Engineers and Constructors Pte Ltd v. Covec (Singapore) Pte Ltd [2008] SGHC 229 ***(refd)***

Legislation referred to:

Arbitration Act 2005, s. 10(1)(b)

Arbitration (Amendment) Act 2011, s. 8

Arbitration Act 1996 [UK], ss. 9, 10

For the plaintiff - Wong Rhen Yen (Emily Goh Siok Fun with him); M/s Dennis Nik & Wong

For the defendant - George Chong Kok Cyoy (Oon Chee Kheng & Ho See Yum with him); M/s Lee, Perara & Tan

Amicus curiae - Dato' WSW Davidson; M/s Azman Davidson & Co

Reported by Wan Sharif Ahmad

JUDGMENT

Mohamad Ariff Yusof J:

Introduction

[1] In this action, the plaintiff, as "contractor", has sued the defendant, who is defined in the relevant contract as "the purchaser" for payment in respect of the delivery of a certain quantity of Deacidified Palm Oil and Catalyst Resins and the processing fees in respect thereof, totalling a sum of over RM804,123.10. The relevant contract is the "Engineering, Procurement, Construction and Commissioning Contract" ("EPCC Contract") dated 25 July 2007, which, according to the plaintiff, is basically for the construction, completion and commissioning of a biodiesel project for use of 250,000 TPY Biodiesel and 27,308 TPY Technical Grade Glycerine Production Plant at Kuantan Port.

Scope Of Works Under EPCC Contract

[2] The scope of the "Works" under the EPCC Contract is further defined in cl. 13.1 of the contract, reproduced below:

> 13.1 Works to be Performed
>
> Except as otherwise expressly set forth in this Contract, the Contractor shall perform or cause to be performed all the Works, on a fixed price lumpsum basis in accordance with the provision of this Contract including:
>
> (i) all engineering, design, procurement and manufacturing required for a completely engineered Biodiesel Project;
>
> (ii) Transportation of plant & equipment up to Site, port of entry clearance and handling works in Malaysia required in connection with the completion of the Biodiesel Project;
>
> (iii) construction infrastructure works, civil and structural construction, mechanical and electrical erection and installation works and commissioning, start-up and testing of the Biodiesel Project, including obtaining the relevant licensing and Consents;
>
> (iv) provision of all necessary labour, construction fuels, chemicals, utilities, tools, Contractor's "Equipment, supplies and other consumables and works (other than materials, equipment and supplies provided by Purchaser's suppliers or Purchaser all as outlined in clause 11.8); and
>
> (v) making good any defects or deficiencies in the Works in accordance with the obligation of the Contractor pursuant to clause 36 hereof.
>
> The Contractor shall be responsible for completing the Works and achieving the Final Performance Acceptance by the agreed Time for Completion and demonstrating the capability of the Biodiesel Project to achieve the Performance Guarantees failing which the Contractor shall be liable for and pay to the Purchaser applicable liquidated damages for delay and performance shortfall pursuant to clause 34 and 35, as the case may be.

A **Plaintiff's Position: Present Dispute Not Falling Under EPCC Contract**

[3] The present dispute for which the plaintiff has filed this claim, according to the plaintiff, does not fall within the scope of
B the EPCC Contract, and concerns the delivery of that above stated quantity of Deacidified Palm Oil and Catalyst Resin to the defendant's sub-contractor, ie, Institute Francais Du Petrol in France.

[4] The relevant invoices are appended as exhs. LCW2 and
C LCW3 to the affidavit in reply filed by the plaintiff affirmed by Loh Chee Wen. In both invoices the EPCC Contract is referred to in the heading under the description "Project".

Application For Stay Under Section 10 AA 2005

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[5] The defendant has filed an application to stay the proceedings under s. 10 of the Arbitration Act 2005, arguing that the subject matter of the present claim is caught by the arbitration clause in the EPCC Contract. The arbitration clause is cl. 50, in
E particular cls. 50.1 and 50.3 which read:

> 50.1 Mutual Discussions
>
> If any dispute or difference of any kind whatsoever including for the avoidance of doubt a dispute or difference
F in relation to the decision or approval given by the engineer (a "dispute") shall arise between the parties in connection with, or arising out of, this contract, or the breach, suspension, termination of validity hereof, the parties shall attempt, for a period of thirty (30) days (or for such shorter period as the parties may agree) after the receipt of
G one party from the other of notification of a dispute to settle such dispute in the first instance by mutual discussions between the parties ...
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> 50.3 Arbitration
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H 50.3.1 If the dispute cannot be settled within 30 days by mutual discussions as contemplated by clause 50.1, the dispute shall finally be settled by an arbitral tribunal (the "Tribunal") under the auspices and in accordance with the rules of the Singapore International Arbitration Centre
I ("SIAC") in effect on the date of this contract (the "arbitration rules"), which rules are deemed to be

> incorporated by reference into this clause. The Tribunal shall consist of three arbitrators who shall be appointed in accordance with the arbitration rules. Both parties undertake to implement the arbitration award. The venue of the arbitration shall be Singapore and the seat of the arbitration shall be Singapore. The language of the arbitration shall be English.

[6] I have added the necessary emphasis to the words "in connection with, or arising out of, this contract …"

The Issues

[7] This application therefore raises a limited, although not necessarily a short nor simple, issue on the scope of the court's jurisdiction under s. 10 of the Arbitration Act 2005 and the related issue of the proper construction to be given to an arbitration agreement as a matter of contract between the parties.

[8] As earlier indicated, the parties have taken opposing positions. The plaintiff maintains that the invoices are for a wholly separate transaction not related to the EPCC contract. The defendant maintains otherwise. The defendant has argued that the delivery and supply of the Deacidified Palm Oil and Catalyst Resin to the defendant's sub-contractor, Institut Francais Du Petrol in France, is for the purpose of testing the Bio Diesel Plant under the EPCC contract and for the purposes of commissioning the plant.

[9] Counsel for the defendant, Mr Oon Chee Kheng, argues that the issues concerns firstly, a question of fact and secondly, a question on the proper construction of the contract. In relation to the issue of construction, with particular reference to cl. 50, counsel has urged upon this court to follow the current judicial trend, which is to adopt a wide construction to an arbitration clause. The recent weighty authority of the English House of Lords in *Fiona Trust & Holding Corporation and Others v. Privalov and Others* [2007] 4 All ER 951 is marshalled in support of the defendant's position. Counsel for the plaintiff, Mr Wong Rhen Yen, has however questioned the defendant's argument on this, preferring to distinguish *Fiona Trust* as being an English case decided on the peculiar wording of the English Arbitration Act 1996. On the suggestion of Mr Oon, with which Mr Wong agreed, Dato' WSW Davidson was invited by this court

as *amicus curiae*. Dato' Davidson graciously accepted the court's invitation, and in the result the court has had the benefit of detailed submissions on the relevant issues for which a note of appreciation has to be extended to all counsel.

Section 10 As Amended

[10] Mr Wong for the plaintiff had earlier argued on the basis of s. 10(1)(b) of the Arbitration Act 2005. This ground was subsequently dropped when it came to light that s. 10 of the Act had been amended recently by the Arbitration (Amendment) Act 2011 which came into force on 2 June 2011. Dato' Davidson has usefully highlighted to this court that the previous statutory formula in s. 10(1)(b) was found to be contrary to the Uncitral Model Law formula. In specific terms, art. 8(1) of the Model Law provides:

> (1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

[11] At this juncture, I feel it will be most appropriate to juxtapose the previous statutory provision as against the present post-amendment provision, as well as to note another amendment under the 2011 amending Act, which is the amendment to s. 8. Such an exercise will usefully set the context of this dispute in its proper perspective.

[12] The unamended s. 10 of the Arbitration Act 2005 previously read:

> **10. Arbitration Agreement and Substantive Claim before Court**
>
> (1) A court before which proceedings are brought in respect of a matter which is the subject of an Arbitration Agreement shall, where a party makes an application before taking any other steps in the proceedings, stay those proceedings and refer the parties to arbitration unless it finds that:
>
> (a) that the Agreement is null and void, inoperative or incapable of being performed; or

(b) that there is in fact no dispute between the parties with regard to the matters to be referred. A

(2) The court, in granting a stay of proceedings pursuant to subsection (1), may impose any conditions as it deems fit.

(3) Where the proceedings referred to in subsection (1) have been brought, arbitral proceedings may be commenced or continue, and an award may be made, while the issue is pending before the court. B

[13] With the amendment in 2011, the entire sub-s. (1) above has been substituted with the following provision: C

(1) A court before which proceedings are brought in respect of a matter which is the subject of an Arbitration Agreement shall, where a party makes an application before taking any other steps in the proceedings, stay those proceedings and refer the parties to arbitration unless it finds that the Agreement is null and void, inoperative or incapable of being performed. D

[14] The statutory formula in the previous s. 10(1)(b), with its reference to "that there is in fact no dispute between the parties with regard to the matters to be referred", has been expressly deleted. E

[15] The new amendment has also included and inserted after sub-s. (2), sub-ss. (2A), (2B) and (2C), but these are not immediately germane for the purposes of the present dispute between the parties, since they refer to admiralty proceedings. For completeness, it is to be noted that there is now a new sub-s. (4) which clarifies that s. 10 shall also apply in respect of an international arbitration, where the seat of arbitration is not in Malaysia. Thus, irrespective of whether the arbitration proceeding is a domestic arbitration or an international arbitration, the same statutory formula applies, even where the seat of arbitration is not in Malaysia. F G

[16] It is also evident with the amendment that it is now mandatory on the court to grant stay where the matter before it is the subject of an arbitration agreement unless the arbitration agreement is, in the words of the statute, "null and void, inoperative or incapable of being performed." H I

[17] It is now no longer possible to argue that in respect of the controversy between the parties there is no "dispute" with regards to the matter to be referred to arbitration, which is a test that invites unnecessary ambiguity and requires the court to determine whether there is a "dispute" between the parties not dissimilar to the function performed by the court in determining whether there is a triable issue in a summary judgment application. The test is now the simpler test of whether the matter before the court is the subject of an arbitration agreement or otherwise. To decide on the simpler test, it will become a matter of construction of the relevant arbitration agreement, where it exists.

Section 8 As Amended

[18] Turning to the amendment to s. 8 of the Arbitration Act, the pre-amendment provision previously read:

> **8. Extent of Court Intervention**
>
> Unless otherwise provided, no court shall intervene in any of the matters governed by this Act.

The amended s. 8 now reads:

> **Extent of Court Intervention**
>
> 8. No court shall intervene in matters governed by this Act, except where so provided in this Act.

[19] Reading the amended s. 8 and s. 10 in conjunction, the mandatory requirement for stay of proceedings before the court where the matter is the subject of an arbitration agreement is made even clearer.

Construction Of Arbitration Agreement

[20] I now turn to the issue of construction of the arbitration agreement, which on the facts of this case, concerns the proper construction to be accorded to cl. 50.1 of the EPCC Contract and its reference to a dispute arising between the parties "of any kind whatsoever … in connection with, or arising out of, this contract".

[21] As indicated earlier, Mr Oon for the defendant has argued strongly in favour of a wide construction of the arbitration clause. The authoritative commentary in Redfern and Hunter on *International Arbitration* (4th edn) is cited. The learned authors have

analysed the impact and breath of "linking words" such as the ones used in the present arbitration clause. The commentary runs as follows:

> Linking words such as "in connection with", "in relation to", "in respect of", "with regard to", "under" and "arising out of" are also important in any dispute as to the scope of an Arbitration Agreement. For example, English courts have in the past given a wide meaning to the phrase "arising out of", and this form of words will usually embrace all disputes capable of being submitted to arbitration. By contrast, the use of the words "under this contract" may be interpreted as excluding any claims other than those when the cause of action this contractual. Such terminological differences may be less important now is the approach taken by the English courts in *Fiona Trust* is followed ... (At paragraph 2.61 of the commentary)

[22] In the same vein, a wide reading of an arbitration clause containing such linking words is also advocated in *Russell on Arbitration* (23rd edn). To quote the relevant passages in the commentary:

> 2 - 078 Disputes "Arising Out Of" Or "Arising Under" The Contract.
>
> ... the phrases "disputes arising under the contract" and "disputes arising out of the contract" were specifically considered by the Court of Appeal in *Fiona Trust* who concluded that they should cover every dispute except a dispute as to whether there was ever a contract at all ... The words "out of" and "under" should be widely construed ...
>
> Disputes "in connection with", "in relation to", or" regarding" a contract. These words, which are frequently encountered and are to be given the same meaning, were at one time given a restrictive interpretation, but are now well established as having a broad meaning. There have been held to include claims for rectification of the contract, as well as mistake and misrepresentation. They may also be sufficient to catch disputes arising under another contract related to the contract containing the arbitration clause.

[23] *Russell on Arbitration* addresses the issue of the proper approach to take in relation to a contract which is related to the contract containing the arbitration clause. If words such as "in connection with" or "in relation to" are used, a wide reading of the arbitration clause must subsume a dispute in the related contract for which no express arbitration clause has been provided.

[24] Basically, it will be a question of construction and intent of the parties, and a very precise analysis on this matter has been provided by Gary Born, *International Commercial Arbitration* (vol. 1), another authority provided by counsel for the defendant. Again, the relevant passage deserves quoting:

> One recurrent factual setting arises when the same parties enter into a series of contracts related to a single project or enterprise, only some of which contain dispute resolution provisions. In these cases, the question arises whether an arbitration clause in one Agreement extends to disputes under other agreements. This is a question of the parties' intent, but, in largely fact-specific decisions, courts have endeavoured to construe the parties' contracts in a commercially sensible manner that, insofar as possible, permits a single, centralised dispute resolution mechanism. So long as the parties to the relevant contracts are the same, and the contracts all relate to a single project, or course of dealing, US, French, English, Swiss, German and other courts have generally been willing to hold that an arbitration clause in one Agreement extends to related agreements (provided that the other agreements do not contain inconsistent arbitration or foreign selection clauses). (At page 1112 of the commentary).

Fiona Trust & Holding Corporation & Ors v. Privalov

[25] *Fiona Trust* is cited in these commentaries (*albeit* the decision at the Court of Appeal level) and counsel for the defendant in applying for stay of proceedings has to a large measure depended on this case, although counsel now cites the judgment of the House of Lords. This case is very illustrative even though the factual scenario may be different. It is to the principles very authoritatively laid down by the House of Lords that we should turn to. The subject matter of *Fiona Trust* concerns the rescission of eight charterparties by the owners of eight vessels (a Russian state owned group) on the ground that the charters had been procured by bribery of the senior officers of the state- owned company. The owners commenced court proceedings for a declaration that the charters had been validly rescinded because the charterparties had been induced by bribery. The charterers applied for a stay under the English Arbitration Act 1996 on the argument that the matter should have been determined by arbitration. The judge at first instance dismissed the application for stay, but this was allowed by the Court of Appeal. On appeal, the House of Lords affirmed the decision of the English Court of

Appeal. In short, the Court of Appeal as well as the House of Lords were of the view that the arbitration agreement covered even the issue of the validity of the contract. It suffices to quote some pertinent passages from the judgment of no less than that illustrious judge Lord Hoffmann to understand the principles underpinning the approach to a broad construction of an arbitration clause. I proceed to do so now in some detail:

> … Arbitration is consensual. It depends upon the intention of the parties as expressed in the Agreement. Only the Agreement can tell you what kind of disputes they intended to submit to arbitration. But the meaning which parties intended to express by the words which they used will be affected by the commercial background and the reader's understanding of the purpose for which the Agreement was made. Businessmen in particular are assumed to have entered into agreements to achieve some rational commercial purpose and an understanding of this purpose will influence the way in which one interprets their language …
>
> If one accepts that this is the purpose of an arbitration clause, its construction must be influenced by whether the parties, as rational businessmen, were likely to have intended that only some of the questions arising out of the relationship were to be submitted to arbitration and others were to be decided by national courts. Could they have intended that the question whether the contract was repudiated should be decided by arbitration but the question whether it was induced by misrepresentation should be decided by court? If, as appears to be generally accepted, there is no rational basis upon which businessmen would be likely to wish to have questions of the validity or enforceability of the contract decided by one tribunal and questions about its performance decided by another, one would need to find very clear language before deciding that they must have had such an intention.
>
> A proper approach to construction therefore requires the court to give effect, so far as the language used by the parties will permit, to the commercial purpose of the arbitration clause. But the same policy of giving effect to the commercial purpose also drives the approach of the courts (and the legislature) to the second question raised in this appeal, namely, whether there is any conceptual reason why parties will have agreed to submit the question of the validity of the contract to arbitration should not be allowed to do so …

> In my opinion the construction of an arbitration clause should start from the assumption that the parties, as rational businessmen, are likely to have intended any dispute arising out of the relationship into which they have entered or purported to enter to be decided by the same tribunal. The clause should be construed in accordance with this presumption unless the language makes it clear that certain questions were intended to be excluded from the arbitrator's jurisdiction. As Longmore LJ remarked, …: "[i]f any businessmen did want to exclude disputes about the validity of a contract, it would be comparatively easy to say so." (At pages 956 to 958 of the report)

Assessment Of The Law And Findings

[26] Having considered our statutory formula in s. 10 of our Arbitration Act as amended (which I have analysed earlier), compared our s. 10 with s. 9 of the English Arbitration Act 1996, and assessing the applicability of the principles so well analysed in *Fiona Trust* and the learned commentaries submitted for this court's consideration, I am of the considered view that the approach in *Fiona Trust* should be followed. Quite apart from the broad reading to be given to "linking words" such as "in relation to" or "in connection with" or 'arising under", the principle that it is to be presumed that rational businessmen would intend to have the same forum decide disputes between themselves in respect of the same broad subject matter, unless they have expressed otherwise by clear language, has much to commend it, both in terms of legal principle, logic, commercial sense and policy. I must say I am not quite in agreement with the point made by counsel for the plaintiff that *Fiona Trust* should be distinguished since the English s. 9 is differently worded. I have studied s. 9 of the English 1996 Arbitration Act closely, and there are many more similarities rather than differences between the two. The differences really are differences in mere statutory wording. To support my conclusion, I quote in full s. 9 of the English Arbitration Act 1996 below:

> **Stay of legal proceedings**
>
> 9. (1) A party to an Arbitration Agreement against whom legal proceedings are brought (whether by way of claim or counterclaim) in respect of a matter which under the Agreement is to be referred to arbitration may (upon notice to the other parties to the proceedings) apply to the court in which the proceedings have been brought to stay the proceedings so far as they concern that matter.

(2) An application may be made notwithstanding that the matter is to be referred to arbitration only after the exhaustion of other dispute resolution procedures.

(3) An application may not be made by a person before taking the appropriate procedural step (if any) to acknowledge the legal proceedings against him or after he has taken any step in those proceedings to answer the substantive claim.

(4) On an application under this section the court shall grant a stay unless satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed.

(5) If the court refuses to stay the legal proceedings, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of any matter is of no effect in relation to those proceedings.

[27] In the course of submission, counsel for the plaintiff has relied on two Singapore decisions, ie, *Coop International Pte Ltd v. Ebel SA* [1998] 3 SLR 670 and *Sa Shee & Co (Pte) Ltd v. Kaki Bukit Industrial Park Pte Ltd* [2000] 2 SLR 12. I must say I cannot find any inconsistency in the approach between the approach adopted in these cases and the approach in *Fiona Trust*. In short, the factual matrices are simply different. In *Coop International Pte Ltd*, for instance, the original agreement containing the arbitration clause had been superseded by a separate termination agreement entered into between the parties. This sort of factual matrix will fall very nicely within the qualification introduced in *Fiona Trust* itself; the presumption that rational businessmen will intend their disputes to be handled by one forum can be displaced by clear language to the contrary. *Sha Shee* appears to be a case turning on a question of construction on whether questions raised in regard to two agreements were merely collateral to the agreement containing the arbitration clause, namely whether they could be said to arise out of or be construed as reasonably connected with the latter contract as a matter of construction of the agreements. Further, this is a pre-*Fiona Trust* decision (See however *Sembawang Engineers and Constructors Pte Ltd v. Covec (Singapore) Pte Ltd* [2008] SGHC 229, which refers to *Fiona Trust* and appears to apply it). Persuasive as these decisions may be, presently I believe it will be better to consider *Fiona Trust* as the starting point of any consideration of the principles governing stay of proceedings in relation to widely-drafted arbitration clauses.

[28] Counsel has also submitted a recent decision of our Court of Appeal in *Duta Wajar Sdn Bhd v. Pasukhas Construction Sdn Bhd & Anor* [2012] 4 CLJ 844. With due respect, this decision is hardly relevant on the facts of this present application. In *Duta Wajar*, the issue was one of proof of the existence of the arbitration agreement. The Court of Appeal found on the facts there was no written arbitration agreement, and therefore the question of stay under s. 10 did not arise. *Fiona Trust* was not at all cited. The facts in this present case are wholly different. There is an arbitration clause which is couched in wide terms, and even the invoices refer to the EPCC Contract. I have also considered the e-mail messages included as LCW1. These do not clearly support the plaintiff's stand that the delivery and supply to the sub-contractor are wholly separate transactions in any event. There is sufficient connection between the contract of delivery and supply as evidenced by the invoices and the main EPCC Contract to attract s. 10.

Conclusion And Order

[29] In these premises, it will be only proper to allow the defendant's application for stay in encl. 4 as prayed. Costs shall have to await the outcome of the arbitration. Costs are therefore to be costs in the cause.